IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6222 of 1995

With

SPECIAL CIVIL APPLICATION No. 6223 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ASHWINKUMAR DOLATRAI DESAI - Petitioner(s)
Versus
STATE OF GUJARAT - Respondent(s)

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Appearance :
MR VB MALIK for Petitioner
MR LR PUJARI, AGP for Respondents

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 21/12/2006

COMMON ORAL JUDGMENT

1. Shri V.B. Malik, learned counsel for the petitioners, Shri L.R. Pujari, learned AGP for the State. Heard.

2. This order shall dispose of Special Civil Applications No. 6222 of 1995 and 6223 of 1995.

3. Present are the petitions, where the petitioner seeks to challenge declarations made by Mamlatdar & ALT regarding excess land and direction to the petitioner to surrender the same. The said orders passed by the Mamlatdar were confirmed in appeal so also in revision by the Revenue Tribunal, therefore, the petitioner is before this Court. As facts of both the matters are similar, facts are taken from Special Civil Application No. 6222 of 1995.

4. While the matter was pending before the Mamlatdar & ALT, the Mamlatdar suo motu referred the matter to the State Government or as stated by the respondent in para-8 of the counter-affidavit that the State Government wanted to decide that the said land was rice land or not, therefore, a proposal was invited from the Collector, who, in turn, invited the

proposal in appropriate format from the Mamlatdar & ALT. According to the State, the said proposal dated 14.8.83 along with the record of rain fall for five years preceding to year 1959 along with opinion of the Collector was sent to the State Government, the State Government issued declaratory order dated 10.6.85 that the land is rice land under Section 2[6][d] and [f] of the Gujarat Agricultural Lands Ceiling Act, 1960. Contention of the petitioner all through had been that his land was not recorded as rice land and the matter ought to have been considered in accordance with Sections 4 and 5 of the Gujarat Agricultural Lands Ceilings Act, 1960. The further submission is that if the land was to be treated or declared to be rice land, then an opportunity was required to be afforded to the petitioner before converting the land from dry crop land or grass land to rice land or superior dry crop land.

5. On 30th November, 2006, this Court recorded contention of the petitioner and observed that

as usual, State had not filed its counter affidavit and had not produced any record before the Court that before making recommendations or before entering into an inquiry, Mamlatdar had provided any opportunity of hearing to the petitioner nor had State submitted anything on the records to show that before passing the order dated 19.6.85, an opportunity of hearing was given to the petitioner. The Court directed that the original records be produced before the Court, it also required the State to inform the Court that before the inquiry was made by the Mamlatdar and the recommendations were made by him, whether the petitioner was afforded any hearing or any hearing was afforded to the petitioner by the State before declaring the land fit as rice land. The case was adjourned to 14th December, 2006.

6. On 14th December, 2006, the Court observed that the State was not ready to come out of its slumber nor was ready to file counter affidavit. It is to be noted that on that day, Mr. Suresh Chaudhari, Mamladtar, Chikhli was in attendance,

but despite all, no affidavit was filed. The Court thereafter made remarks against the conduct of the officers of the State and adjourned the case for today.

7. The State has filed affidavit dated 19th December, 2006 along with certain annexures.

8. The High Court wanted information from the State Government that whether before making any inquiry or while making any inquiry, the Mamlatdar afforded any opportunity of hearing to the petitioner, the Court also wanted the State to inform the Court that whether the State Government had issued any notice of hearing to the petitioner before declaring the land as rice land.

9. The affidavit dated 19th December, 2006 in para-3, after ten years of admission of the writ application now says that;

> "3.It is submitted that I am filing the present affidavit-in-reply only with a view to oppose the admission of the present petition and grant of any interim relief in

favour of the petitioner reserve my right to file the detailed affidavit as and when necessary."

I am shocked and surprised to see this affidavit. All concerned knew that the matter is included in the final hearing list. The officers in their hibernation are still in the year 1995 and are still proposing to oppose the admission. I do not understand that why this officer and the officers who are not alive to their duties, continue in the services of the government even if they cannot understand the orders passed by this Court. Be that as it may. It is for the government to have the services of such officers and suffer such remarks from the High Court or from such other competent authorities.

10. In the affidavit-in-reply filed by Mr. J.B. Patel, Deputy Collector, Navsari, not even a single word is mentioned that the Mamlatdar ever issued any notice or afforded any opportunity of hearing to the petitioner though the Court wanted the State to inform the Court that whether such opportunity was given by the

Mamlatdar. Unfortunately, the earlier proceedings recorded by this Court either were not read by the said Deputy Collector or he could not understand the language in which the proceedings were recorded or despite reading and understanding the clear orders of the Court, he was deliberately not observing the true spirit of the said orders. In absence of any statement from the side of the State that opportunity of hearing was afforded by the Mamlatdar to the petitioner, this Court must hold that present is a case of non-grant of opportunity and violation of principle of natural justice. So far as the hearing by the State authorities is concerned, it is clearly mentioned in the order that the State had taken clear decision unilaterally. From this statement, it is clear that after receiving the recommendations either from Mamlatdar or through the Collector, the State did not afford any opportunity of hearing to the petitioner.

11. If no opportunity at any point of time is afforded to an agriculturist, who is facing

proceedings under the Ceiling Act and an order is made against his interest converting his grass or dry crop land into rice land, then this Court must hold that the action taken by the State and its officers is bad.

12. Section 2[d] of 1960 Act says that rice land means land – for the cultivation of rice. If particular land is recorded as rice land, then there would be no problem in treating the land as rice land, but in case, the land is not recorded as rice land and it is proposed to be declared or treated as rice land, then, the person who would be adversely affected by such declaration is required to be heard. Even if Section 2 or Section 2[d] of the Act does not provide for any opportunity of hearing, then too, the principles of natural justice are to be observed, because, the order proposed to be passed would adversely affect the interest of the holder of the land and would lead to civil consequences.

13. In the present matter, the land was declared rice land without affording any opportunity of

hearing to the petitioner simply on basis of certain unilateral inquiries and records produced before the Mamlatdar. The petitioner, if was given an opportunity could certainly satisfy the authorities that in the given set of circumstances and in view of the special circumstances, the land could not be treated to be rice land. If possibility of another view at the instance of the petitioner cannot be ruled out, the principles of natural justice have to be observed.

14. The order passed by the State Government declaring the land as rice land is hereby quashed. Consequently, the orders passed by the Mamlatdar, declaring surplus land, confirmed in appeal by the Deputy Collector and further confirmed by the Gujarat Revenue Tribunal in revision are quashed. The proceedings are remanded to the Mamlatdar for deciding the same in accordance with law.

15. If the State Government or the revenue authorities are still of the opinion that the land belonging to the petitioner are to be

treated or declared as rice land, then before making such declaration and before making an inquiry, a notice will have to be issued to the petitioner to show cause that why such land be not declared as rice land.

16. Both petitions are allowed with cost of Rs. 2500/-to be paid by the State to the petitioner in each of the petition. Cost is being imposed not because the petitioner has undergone expenses, but because of the indifferent attitude shown by the State and its officers. Rule is made absolute accordingly.

[R.S. GARG, J.]

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